

REPRESENTATIVE FOR PETITIONER:

Lester M. Schaefer, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Kathleen L. Rhodes, Fayette County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Lester M. Schaefer,	)	Petition No.:	21-003-14-1-5-20359-15
)		
Petitioner,	)	Parcel No.:	21-05-25-400-512.000-003
)		
v.	)	County:	Fayette
)		
Fayette County Assessor,	)	Township:	Connersville
)		
Respondent.	)	Assessment Year:	2014

Appeal from the Final Determination of the
Fayette County Property Tax Assessment Board of Appeals

October 20, 2016

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioner prove that the subject property's 2014 assessment was incorrect?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2014 appeal with the Fayette County Assessor on February 21, 2014. On July 24, 2015, the Fayette County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. On August 6, 2015, the Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board.
3. On June 9, 2016, the Board's administrative law judge (ALJ), Patti Kindler, held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Lester M. Schaefer and Fayette County Assessor Kathleen L. Rhodes were sworn and testified.
5. The Petitioner submitted the following exhibits:¹

Petitioner Exhibit 1: Multiple Listing Service (MLS) sheet for the subject property with a closing date of May 14, 2007,
Petitioner Exhibit 2: MLS sheet for 218 Fiant Street,
Petitioner Exhibit 3: MLS sheet for 2247 North Grand Avenue,
Petitioner Exhibit 4: MLS sheet for 2125 Indiana Avenue,
Petitioner Exhibit 5: MLS sheet for 1702 North Central.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1: Sales-comparison analysis regarding the subject property's sale price,
Respondent Exhibit 2: Sales-comparison analysis regarding the subject property's assessment,
Respondent Exhibit 3: Subject property record card (PRC),
Respondent Exhibit 4: PRC for 611 Alquina Road,
Respondent Exhibit 5: PRC for 527 Vine Street,
Respondent Exhibit 6: PRC and MLS sheet for 1511 Virginia Avenue,
Respondent Exhibit 7: Department of Housing & Urban Development (HUD) settlement statement for the subject property dated February 14, 2014, with attached sales disclosure form,
Respondent Exhibit 8: HUD settlement statement for the subject property dated May 14, 2014, with attached sales disclosure form.

¹ The parties initially objected to the other's exhibits; however both agreed to withdraw their objections.

7. The following additional items are recognized as part of the record:

Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Hearing notice, dated May 2, 2016,
Board Exhibit C:	Hearing sign-in sheet.
8. The property under appeal is a single-family residence located at 725 Vine Street in Connersville.
9. The PTABOA determined the total assessment is \$94,000 (land \$16,400 and improvements \$77,600).
10. The Petitioner requested a total assessment of \$30,000 (land \$5,000 and improvements \$25,000).

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

12. The property's assessment is too high. The Petitioner purchased the property from HUD on February 7, 2014, for \$28,000. This purchase indicates a "fair market value" for the property as it had been on the market for over two years and was in "very bad condition." *Schaefer argument (referencing Resp't 7); Pet'r Ex. 1.*
13. As the Petitioner was in the process of "rehabbing" the property, someone made an offer to purchase it. Admittedly, the Petitioner is "not in the business to sell property under market value" so on May 14, 2014, he sold the property for \$40,500. Even if the

property is completely renovated “it will not sell for \$85,000 in Connersville.” *Schaefer argument (referencing Resp’t Ex. 8).*

14. Several sales indicate the property is over-assessed. The first property, located at 218 Fiant Street sold on September 16, 2014, through a realtor for \$20,000. *Schaefer testimony; Pet’r Ex. 2.*
15. The second property, located in a “little better area” at 2247 North Grand Avenue sold for \$27,000 on October 11, 2013. According to the MLS sheet, the owner of this property is “of record.” *Schaefer testimony; Pet’r Ex. 3.*
16. The third property, located at 2125 Indiana Avenue, sold for \$24,500, on October 21. Again, the owner is listed as “of record.” *Schaefer testimony; Pet’r Ex. 4.*
17. The fourth property, located at 1702 North Central, sold for \$24,507 on December 12, 2013. The owner is again listed as “of record.” *Schaefer testimony; Pet’r Ex. 5.*
18. The Respondent utilized properties that are in “better condition” than the subject property in her analyses. Additionally, the property located at 1511 Virginia is in a “different part of Connersville” and the neighborhood is not comparable. *Schaefer argument (referencing Resp’t Ex. 6).*

RESPONDENT’S CONTENTIONS

19. The property is “probably not” worth \$94,000, but the Petitioner failed to offer any evidence to prove otherwise. Granted, the Petitioner purchased the property for \$28,000 but that “transaction was a bank sale.” Bank sales and short sales are not valid sales for assessing purposes and they are not utilized in trending. *Rhodes argument; Resp’t Ex. 7.*
20. The Petitioner’s sales analysis is flawed because three of the four sales were bank sales. This explains why the owners are listed as “of record” on their respective MLS sheets. Bank sales are not considered “valid sales” because “some people get a good deal when they buy from a bank.” *Rhodes argument (referencing Pet’r Ex. 2, 3, 4, 5).*

21. In an effort to support the assessment, the Respondent offered two separate analyses. One analysis compares the subject property's 2014 sales to the sale prices of three other properties.² The second analysis compares the subject property's 2014 assessment to those same three properties' sale prices. The Respondent conceded that "not being an appraiser" she did not make any adjustments to account for differences. *Rhodes testimony; Resp't Ex. 1, 2.*
22. The first property, a 2,720 square foot home located at 611 Alquina Road sold for \$110,000 on June 15, 2012. *Rhodes testimony; Resp't Ex. 1, 2, 4.*
23. The second property, a 2,102 square foot home located at 527 Vine Street sold for \$75,000 on March 5, 2012. This property was listed in "good condition" at the time it sold. *Rhodes testimony; Resp't Ex. 1, 2, 5.*
24. Finally, a 2,838 square foot home located at 1511 Virginia Avenue sold for \$90,000 on April 27, 2012. Granted this property is located outside of the subject property's neighborhood, but it is the "most similar in size." *Rhodes testimony; Resp't Ex. 1, 2, 6.*

BURDEN OF PROOF

25. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
26. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior

² Regarding the May 14, 2014, sale of the subject property, the subject property record card and sales disclosure form both indicate the selling price was \$32,000. *Resp't Ex. 3, 8.* However, the parties agree the correct sale price is listed on the HUD statement as \$40,500. *Schaeffer testimony; Rhodes testimony; Resp't Ex. 8.*

year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

27. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
28. Here, there was no dispute the assessment decreased from \$94,500 in 2013 to \$94,000 in 2014. Additionally, the Petitioner failed to offer any argument that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioner.

ANALYSIS

29. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

30. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2014 assessment, the valuation date was March 1, 2014. *See* Ind. Code § 6-1.1-4-4.5(f).
31. The Board will first address the Petitioner's sales data. Here, the Petitioner offered documentation of four sales of purportedly comparable properties in Connersville. In offering this evidence, he is essentially relied on a sales-comparison approach to establish the market value-in-use of the property. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
32. To effectively use the sales-comparison approach as evidence in a property tax appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the type of analysis required and the related adjustments are lacking from the Petitioner's evidence. Granted, the Petitioner offered a limited description of the properties he presented, but he failed to make adjustments to account for the major differences between the purportedly comparable properties and the subject property. Further, his analysis failed to yield an indicated value. Thus, his sales evidence lacks probative value.
33. The Petitioner also introduced evidence of not only the price he purchased the property for, but also the price that he sold the property for. As the record indicates, he purchased

the property from HUD for \$28,000 on February 7, 2014. Then on May 14, 2014, he sold the property to an individual for \$40,500. As the Board has previously stated, the purchase price of a property is often the best indication of the property's value. *See Huber Realty, Inc. v. Hendricks Co. Ass'r*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). Additionally, both sales are sufficiently close to the March 1, 2014, assessment date to "perhaps" be probative of the property's market value-in-use. However, in regard to his February purchase, the Petitioner admitted he purchased the property out of foreclosure from HUD.

34. The Manual provides the following definition of "market value":

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgably, and for self-interest, and assuming that neither in under undue duress.

2011 REAL PROPERTY ASSESSMENT MANUAL at 5-6.

35. It seems apparent from the Manual's definition that a property purchased out of foreclosure may not reflect its market value for reasons such as a lack of exposure to the open market or the seller (i.e. the bank) not being typically motivated. Therefore, it is incumbent upon the party relying upon that sale to offer specific evidence to allay these concerns. *See Lake Co. Ass'r v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) review denied (approving of the use of bankruptcy sales when a taxpayer established that such sales were a market norm).
36. Here, the Petitioner offered little to dispel the Board's concerns. In support of his contention that his \$28,000 purchase price represented the property's market value, the Petitioner testified that the property had been on the market over two years and was in "very bad condition" thus his purchase represented "fair market value." However, he failed to offer any additional evidence to support his contention.

37. HUD acquires properties through the foreclosures of Federal Housing Administration (FHA)-insured mortgages. While it is true that HUD homes are listed in the local MLS, the process of buying a HUD home is different than with a standard purchase. One major difference is that there is no price negotiation. Bids, or offers, for a property are submitted electronically, and HUD accepts the highest acceptable net bid. HUD's primary goal is to maximize the return to the FHA insurance fund.³ Thus, it is not "impossible" for this type of sale to qualify as a "market sale."
38. The Board is not aware of any absolute requirement that HUD cannot accept a bid for a property that is below market value. And the Petitioner did not point to any such prohibition. In fact, it seems that such an absolute requirement would frustrate HUD's primary mission of maximizing the return to the FHA insurance fund. Thus, it is difficult to view HUD as a typically motivated seller in every transaction, and therefore it was incumbent on the Petitioner to provide at least some documentary evidence that his purchase was indicative of the property's market value.
39. The evidence shows the opposite. In examining the subject property record card, including a listing of the property's recent transactions, the property sold for \$112,500 in 2007, and then again for \$128,223 in 2013. *Resp't Ex. 3*. Additionally, according to the Petitioner, he sold the property three months after he purchased it for \$40,500. The Petitioner's HUD purchase price is but a fraction of the property's recent sales. The Board does not conclude that the Petitioner's February 7, 2014, purchase was a normal "market" transaction.
40. The Petitioner's May 14, 2014, sale of the property to a private individual, however, is another matter. Granted, the Petitioner failed to offer any evidence that the property was exposed to the open market prior to the sale, but the Respondent failed to raise this issue. The Respondent failed to offer any argument about why this sale should not be considered as evidence of the market value-in-use. Furthermore, the Respondent stated

³ See generally <http://portal.hud.gov/hudportal/HUD>.

the property is “probably not worth \$94,000.” The Petitioner also testified that he was in the process of “rehabilitating” the property when he sold it in May of 2014. Thus, the property was likely in better condition on the sale date than it was on the March 1, 2014, assessment date. Additionally, this sale was close enough to the relevant valuation date to be considered probative. Therefore, given this unique set of facts, the Board finds the Petitioner made a prima facie case that the 2014 assessment should be no more than \$40,500.⁴

41. Once a Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner’s case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise his prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass’r*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
42. In an effort to rebut the Petitioner’s case, the Respondent offered two separate sales analyses. The Respondent was under the same requirements to establish the comparability of the purportedly comparable properties, and explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-471. Here, the type of analysis required and related adjustments are missing.
43. The Respondent presented insufficient evidence to indicate the purportedly comparable properties utilized are in fact comparable to the subject property. She admitted that “not being an appraiser” she did not make any adjustments to account for differences between the properties. Additionally, her analyses did not provide an indicated value for the subject property. Thus, the Respondent failed to rebut the Petitioner’s case.

⁴ The Petitioner failed to provide enough probative evidence to reduce the total assessment to his requested value of \$30,000.

SUMMARY OF FINAL DETERMINATION

44. In accordance with these findings and conclusions, the 2014 assessment must be reduced to \$40,500.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.